

REMARKS

STATUS OF CLAIMS

In response to the Office Action dated February 9, 2007, claims 1, 32, 40, 71, 79 and 80 have been amended, and claims 7 and 46 have been canceled. Claims 1-3, 6, 8-35, 40-42, 45, 47-74, 79 and 80 are now pending in this application. Claims 36-39 and 75-78 have been withdrawn from consideration as being directed to a non-elected invention.

REJECTION OF CLAIMS UNDER 35 U.S.C. § 102 AND § 103

I. Claims 1-3, 6-9, 11, 15-23, 30, 32, 34, 40-42, 45-48, 50, 54-62, 69, 71, 73, 79 and 80 have been rejected under 35 U.S.C. § 102(e) as being anticipated by Fritsch (USPN 6,247,130), for the reasons substantially of record.

The rejections are respectfully traversed.

As asserted in the previous response, Fritsch does not disclose or suggest that the ID information of a sub-application to be utilized next is stored in the executed sub-application, which is required by each of independent claims 1, 32, 40, 71, 79 and 80. In the section "Response to Arguments/Amendment" of the final Office Action, the Examiner contends "that Fritsch discloses every album or CD has track number and track name (note that each track is equivalent to sub-application's ID), see figure 2A, the Louis Armstrong album contains 8 tracks, track number 1 to track number 8, each track assigns a track name or song title, track number 2 is next to track number 1, track number 3 is next to track number 2, etc... Therefore, Fritsch does teach "the ID information of sub-application to be utilized next that is stored in the executed sub-application".

However, the Examiner's assertion as to what is disclosed in Fritsch does not evince that Fritsch discloses or suggests that the ID information (for identification) of a sub-application to be utilized next is stored in the executed sub-application. That is, using the Examiner's interpretation that each track (of an album) is equivalent to sub-application's ID, the Examiner has not evinced that Fritsch discloses or suggest, that any track/name/song title (sub-application) that is current being played (executed) stores the track/name/song title (sub-application) that is to be played (utilized) next. The Louis Armstrong album, referred to by the Examiner, can be interpreted as a main file having stored within it a plurality of sub-files. When a player plays the album, each of the sub-files is played (selected) in sequential order. Of course, there are known ways of changing the order of playing (selecting) sub-files to another order and the sub-files will then be sequentially played (selected) in the new order, or of having the player randomly play (select) sub-files, but neither of these requires that the track/name/song title (sub-application) that is currently being played (executed) stores the track/name/song title (sub-application) that is to be played (utilized) next. At best, at the end of any sub-file is an address (which is not an ID for identification of a track/name/song title) to go to. That is, the last command in a sub-file is generally a command to go to an identified address and then the player goes to this address and executes the instruction at this address location. The address to go to does not identify any particular track/name/song title; it is just an address.

Thus, independent claims 1, 32, 40, 71, 79 and 80 are patentable over Fritsch, as are dependent claims 2, 3, 6-9, 11, 15-23, 30, 34, 41, 42, 45-48, 50, 54-62, 69 and 73. Consequently, the allowance of claims 1-3, 6-9, 11, 15-23, 30, 32, 34, 40- 42, 45-48, 50, 54-62, 69, 71, 73, 79 and 80 is respectfully solicited.

II. Claims 10, 12-14, 31, 33, 49, 51-53, 70 and 72 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Fritsch, for the reasons substantially of record.

The rejections are respectfully traversed.

Independent claims 1, 32, 40 and 71 are patentable over Fritsch and claims 10, 12-14, 31 depend indirectly from independent claim 1, claim 33 depends directly from independent claim 32, claims 49, 51-53 and 70 depend indirectly from independent claim 40, and claim 72 depends directly from independent claim 71. Therefore, claims 10, 12-14, 31, 33, 49, 51-53, 70 and 72 are patentable over Fritsch also.

As noted in the previous response, the assertion by the Examiner that each of the features recited in claims 10, 12-14, 31, 33, 49, 51-53, 70 and 72 is well-known in the art is not based on any objective evidence of record and, therefore, lacks substantial evidence support and must be considered merely the opinion of the Examiner. In addition, what may be known in some general context does not necessarily render the claimed subject matter as a whole obvious within the meaning of 35 U.S.C. § 103.

As further noted in the previous response, it is Applicants' position that, in view of the lack of any objective evidence of record regarding the Examiner's allegation that each of the features recited in claims 10, 12-14, 31, 33, 49, 51-53, 70 and 72 is well-known, and the lack of any objective evidence of record supporting the allegation that a person of ordinary skill in the art would adopt the well-known features recited in claims 10, 12-14, 31, 33, 49, 51-53, 70 and 72 into Fritsch "for the purpose of providing incentive to the consumers in order to encourage the consumers to purchase the products or services", the only reasonable conclusion is that the

present rejections are examples of improper hindsight reconstruction of the claimed invention which do not support a *prima facie* case that claims 10, 12-14, 31, 33, 49, 51-53, 70 and 72 are obvious over Fritsch under 35 U.S.C. § 103.

In the final Office Action, in response to this assertion, the Examiner does not cite any reference showing the features of these claims, but maintains that “the applicant has not challenged the correctness of the assertions, only the use of Official Notice”.

With regard to what the Examiner contends in the final Office Action is well known in the art regarding claims 10 and 12-14, the Examiner states the following:

For example, a second consumer may get a product or service with lower price [than] that [of] a first consumer because discount rate provided from vendor, a product has a discount rate because the product has the high volume in the inventory.

However, even presuming this were true, this does not evince that the “price information corresponding to said sub-application *that is being sent in the second or later place is set lower than said price information corresponding to said sub-application that is being sent in the first place.*” What the Examiner does not consider is that claim 1 requires the receiving unit to receive information from a (singular) user, and the sending unit sends at least one sub-application according to the information received (from the (single) user). Since claims 8-10 do not introduce another user into what has been recited in claim 1, the sub-application that is being sent, as recited in claim 10, in the second or later place is still to the single user. For this single user, the price information corresponding to the sub-application *that is being sent in the second or later place* is set lower than the price information corresponding to the sub-application that is

being sent in the first place. That is, an incentive of lower price is presented to the single user to encourage him/her to subsequently request sub-applications to be sent.

The situation set forth by the Examiner requires a second consumer who would get a discount for all sub-applications sent. The first consumer who got the initial sub-application is not considered. Thus, the situation set forth by the Examiner has nothing to do with what is recited in claim 10 and in fact, evinces the folly of trying to respond to mere opinion and not objective evidence of record. Consequently, it is requested that the Examiner specifically cite a reference showing that for a common user, the price information corresponding to a sub-application *that is being sent in the second or later place* is set lower than the price information corresponding to a sub-application that is being sent in the first place, or withdraw this rejection as to claims 10, 12-14, 49, 52 and 53.

Regarding the Examiner's contention with regard to claims 31 and 33 that:

However, providing a confirmation unit confirming whether sending of said sub-application from said sending unit is completed, wherein said charging unit charges for said sub-application when said confirmation units confirms completion of the sending is well known in the art. For example, a confirming message usually sent to the user to let the user know that the downloading is completed when the user finishes downloading digital content; charging the user after the user receives or downloading digital content.

Applicants are aware of charging for a digital content before it is downloaded, but not of charging for digital content after it is confirmed that it has been downloaded to the user. Therefore, it is requested that the Examiner specifically cite a reference showing a confirming message sent to the user to let the user know that the downloading is completed when the user finishes downloading digital content and then charging the user after the user receives or downloads digital content, or withdraw this rejection as to claims 31, 33, 51, 70 and 72.

III. Claims 24-29, 35, 63-68 and 74 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Fritsch in view of Kupka et al. (USPN 6,434,535), for the reasons substantially of record.

Claims 24-29 depend directly or indirectly from independent claim 1, claim 35 depends indirectly from independent claim 32, claims 63-68 depend directly or indirectly from independent claim 40, and claim 74 depends indirectly from independent claim 71. Kupka et al. does not disclose the feature of “the ID information of sub-application to be utilized next that is stored in the executed sub-application” that is recited in independent claims 1, 32, 40 and 71. Therefore, claims 24-29, 35, 63-68 and 74 are patentable over Fritsch also, even when considered in view of Kupka et al. Consequently, the allowance of claims 24-29, 35, 63-68 and 74 is respectfully solicited.

IV. Dependent claim 7 recites”

when said receiving unit receives the ID of said sub-application, said sending unit sends, based on said ID received, the relevant sub-application stored in said first storage unit.

Dependent claim 46 recites:

said sending step includes the step of, when the ID of said sub-application is received in said receiving step, sending the relevant sub-application stored in said first storing step based on said received ID.

More specifically, dependent claims 7 and 46 emphasize a feature of the ID information that is clearly not disclosed or suggested in the applied prior art reference.

Notwithstanding the fact that Applicants believe the present claims are patentable over the applied prior art references, as asserted above, to expedite prosecution, independent claim 1 has been amended to incorporate the features of claim 7, now canceled, and independent claim 40 has been amended to incorporate features of claim 46, now canceled. Independent claims 32, 71, 79, and 80 have been amended in a manner similar to independent claim 1.

Amended independent claim 1 now clearly delineates that the application that is currently being executed includes the ID of an application that is to be utilized next (i.e., to be executed next), and that the next application is sent to a user based on the ID. Amended independent claims 7, 32, 71, 79, and 80 now have the same feature, and amended independent claim 40 has a similar feature.

Since the description in the embodiments of the specification is described taking a golf game as an example to explain the present invention in an easy-to-understand manner, the present invention may be misunderstood by the Examiner as having the same configuration as that of the music downloading described in Fritsch if attention is focused only on that description. Specifically, as in the music downloading, a game player (user) playing the golf game described in the embodiments can easily guess what application will be utilized next, such that Hole 1 will always be followed by Hole 2. This misunderstanding may be a reason for the rejections of the claims by the Examiner.

In the present invention, by virtue of the significant features described above, a user does not have a way of knowing the ID of an application. In other words, the user does not have to know the ID of an application. Therefore, the user *never knows* what application will be sent (downloaded) next (subsequent) to the application currently being executed. *This feature is*

completely different from the music downloading, as described in Fritsch, that allows any user to easily guess the order in which songs are downloaded.

For example, if the invention recited in claim 1 were applied to the downloading of song data, advantages, as described, below would be expected. It is assumed that a user is going to download song data through a mobile phone or the Internet,

A medium such as a CD has a plurality of songs recorded therein. Even if songs in the same genre (such as classic, jazz, or the like) are recorded beforehand in a CD, some songs suit a user's taste, and some songs have little appeal for the user. It is assumed that the user downloads a song of interest in the CD, which is a slow-tempo song, from a server to a music player as the first song and starts playing the downloaded song. The song would include the ID of a song to be downloaded next. It would also be possible to allow the song to include a first ID indicating an up-tempo song and a second ID indicating another, slow-tempo song. It can be assumed that the music player is programmed such that, when the user stops playing the first song halfway and starts downloading a next song, the up-tempo song indicated by the first ID is downloaded from the server, and when the user plays the song to the end, the slow-tempo song indicated by the second ID is downloaded from the server.

Consequently, even when the present invention is applied to the downloading of songs, in addition to a game software application such as an RPG (role playing game), as described in the embodiment disclosed in the present application, the present invention allows songs to be downloaded in the order unexpected by (unknown to) a user.

Other Features:

As described in the section "Description of the Background Art" of the present specification, downloading a piece of game software that is increasing in size via a communication path (for example, downloading a piece of software recorded in a DVD or the like at once) has problems such that a significant communication time is required and that the communication path is crowded. The same is true when downloading data such as a movie, a drama series, and an electronic book. The present invention makes it possible to remove the burden on the communication path by dividing data of an object to be downloaded beforehand and downloading each of the divided data (application), and thus can solve these problems.

Further, downloading each application obtained by dividing the data one by one has another characteristic concerning charging fees. Applicants regard this characteristic as also being important. Specifically, data, such as an electronic book or a movie, can be divided beforehand into a plurality of data units (applications) such as Introduction, Chapter 1, Chapter 2, ... In operation, first only Introduction is downloaded and executed (played), and when a user views Introduction and feels it is not interesting, the user can stop downloading data after Introduction (data of Chapter 1, Chapter 2, ...).

According to claims 8 to 10, when the user views Introduction and feels it is not interesting, only the fee for Introduction is charged to the user. For example, the user can stop purchasing (downloading) an electronic book priced \$10 that is divided beforehand into 10 chapters after the user has downloaded Introduction only, and in that case, the user only has to pay \$1 for Introduction.

V. In view of the above, the allowance of claims 1-3, 6, 8-35, 40-42, 45, 47-74, 79 and 80, as amended, is respectfully solicited.


CONCLUSION

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Edward J. Wise (Reg. No. 34,523) at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

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Respectfully submitted,

By 

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